IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

RSA.No. 396 of 2004()

(AGAINST THE JUDGMENT DATED 21/12/2001 ON THE FILE OF SUBORDINATE JUDGE, PAYYANNUR IN AS.85/1995 AND DECREE AND JUDGMENT DATED 31/07/1995 ON THE FILE OF THE MUNSIFF COURT, PAYYANNUR IN OS.86/1993)

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APPELLANT/APPELLANT/PLAINTIFF:

KATAMKOTT VALAPPIL AMBUJAKSHAN,
S/O. NARAYANI, AGED 32 YEARS, AGRICULTURIST,
PERINGOM AMSOM, THAVIDISSERI DESOM.

BY ADV. SRI.M.V.AMARESAN

RESPONDENTS: RESPONDENTS/DEFENDANTS:

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1. **KATAMKOTT VALAPPIL PARU, D/O. KUNHATHI, AGED 67 YEARS, AGRICULTURIST.**
2. **KATAMKOTT VALAPPIL KARTHIYAYANI, D/O. KUNHATHI, AGED 62 YEARS, AGRICULTURIST.**
3. **KATAMKOTT VALAPPIL THAMBAI, D/O. MANI, AGED 47 YEARS, AGRICULTURIST. (ALL THE RESPONDENTS ARE RESIDING AT PERINGOM AMSOM, THAVIDISSERI DESOM).**

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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S.A. NO. 396 OF 2004

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Dated this the 9th day of August, 2007

JUDGMENT

Plaintiff in O.S.86/1993 on the file of Munsiff Court, Payyannur is the appellant. Defendants are the respondents. Appellant instituted the suit seeking a decree for injunction contending that plaint schedule property originally belonged to Kadankot Valappil Chiri and as per Ext.A1 assignment deed, it was sold in his favour and he has been in possession and enjoyment of the property and respondents have no right over the same and therefore they are to be restrained by a permanent prohibitory injunction. It was contended that Ext.A2 purchase certificate was obtained in respect of the property by Chiri and respondents have no manner of right over the same. Respondents in their written statement contended that plaint schedule property did not belong to Chiri and was obtained by Kannan as per Ext.B1 registered

marupattam and Kannan died in 1972 and till then it has been in the possession of Kannan and on the death of Kannan, his rights devolved upon his wife Kunhathi and children Chiri, first respondent, Paru , Mani and second respondent and on the death of Kunhathi, her right devolved on her children and after the death of Mani, her right devolved on her children Yesoda, Thambayi, Seelavathi, Gangadharan and Sasidharan and respondents are co-owners and appellant is not entitled to the decree sought for.

2. Learned Munsiff on the evidence of PW1 and DW1 and Exts.A1 to A8, B1 and B2 and C1 to C4 found that appellant did not establish the lease of Chiri and did not establish the exclusive possession and hence is not entitled to the decree sought for. The suit was dismissed. Appellant challenged the decree and judgment before Sub Court, Payyannur in A.S.85/1995. Learned Sub Judge on reappreciation

of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for the appellant was heard.

4. The argument of learned counsel appearing for appellant is that respondents disputed the identity of the plaint schedule property and the plaint schedule property is not the property covered under Ext.B1 and there is no evidence to prove that Ext.B1 marupattam was accepted by the jenmi and instead of Ext.A7, the original of Ext.B1 produced by the appellant establish that marupattam was not accepted and therefore under Ext.B1 respondents are not entitled to claim any right and Chiri obtained Ext.A2 purchase certificate from the Land Tribunal on her own right and courts below should have granted the decree sought for. Learned

counsel argued that without accepting Ext.B1 marupattam no right could be claimed thereunder and as the tenancy right of Chiri is proved before Land Tribunal and Ext.A8 is conclusive evidence of title, courts below should have granted the decree.

5. On hearing learned counsel, on the facts and evidence, I do not find any substantial question of law involved in the appeal.

6.The suit is only for injunction. The suit was dismissed as early as 31.7.1995. Thereafter there was no order in favour of the appellant. Even first appeal was dismissed on 21.12.01.

7. The case of the appellant is that plaint schedule property was obtained by Chiri as per an oral lease from the Devaswom and subsequently under Ext.A2 the purchase certificate she obtained jenm right and it was transferred in favour of the

appellant under Ext.A1. Learned counsel vehemently aruged that there is no evidence to prove that Ext.B1 marupattam was accepted and instead production of Ext.A7 establish that the marupattam was not accepted.

8. The trial court and first appellate court on reappreciating the evidence found that though Chiri claimed that she is a tenant, there is no acceptable evidence to prove that Chiri was the tenant. Chiri was none other than the daughter of kannan, who executed Ext.B1 marupattam. Ext.B1 marupattam shows that Kannan has been in possession of the property. The trial court relying on the recitals in Ext.B1 found that Kannan has been in possession of the property and there is no evidence to prove that he was divested with that possession so as to grant a lease in favour of Chiri. Though Ext.A3 rent receipt was produced, the trial court

and first appellate court on the evidence found that Ext.A3 cannot be relied on. The courts below found that the receipt is not genuine. That factual finding cannot be interfered on reappreciation of evidence, in exercise of the powers of this court under section 100 of Code of Civil Procedure. As no substantial question of law is involved, appeal is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006